

Held: Claim of certified elementary school teacher that she was entitled to advance notice of her termination from employment at public charter school serving grades 7 through 12 under Teachers' Tenure Act is denied and dismissed as petitioner was not certified to teach grades 7 through 12 and thus was not a "teacher" under the Act.

DATE: December 5, 2014

## **I. Undisputed Facts and Standard of Review**

Petitioner, AMANDA MOTTA (“Motta”), requested a hearing before the Commissioner on or about September 12, 2014 to challenge her termination from employment by Respondent, TRINITY ACADEMY FOR THE PERFORMING ARTS (“TAPA”).<sup>1</sup>

A pre-hearing conference with counsel for the parties was held before the undersigned on September 22, 2014 at which TAPA’s counsel moved to dismiss the request, arguing that: (1) the Commissioner lacked subject matter jurisdiction over the claim; and (2) the doctrine of laches mandated that the claim be dismissed as Motta did not make her request to the Commissioner until after the 2014-2015 school year had started.

The parties agreed to brief the issues and written submissions were received by the undersigned on October 1, 2014 and November 6, 2014.

Although state rules of civil procedure are not, strictly speaking, applicable, under Rhode Island law (which will be followed), a motion to dismiss should be granted only “when it is clear beyond a reasonable doubt that the plaintiff would not be entitled to relief from the defendant under any set of facts that could be proven in support of the plaintiff’s claim.” *Palazzo v. Alves*, 944 A.2d 144, 149–50 (R.I.2008) (quoting *Ellis v. Rhode Island Public Transit Authority*, 586 A.2d 1055, 1057 (R.I.1991)).<sup>2</sup>

The following facts are not in dispute:

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<sup>1</sup> In the normal course, such requests should be heard by the Commissioner only after an appeal has been made to the charter school’s governing body. See RIGL § 16-77-5.1 (a). Here, however, TAPA did not contest Motta’s assertion that she had no right to appeal her dismissal to TAPA’s Board of Governors. See Petitioner’s Memorandum in Support of Claim (“Motta’s Mem.”) at 5.

<sup>2</sup> The Rhode Island Supreme Court recently left for another day whether to adopt the revised federal standard, which requires that “[f]actual allegations must be enough to raise a right to relief above the speculative level,” and a plaintiff must “nudge[ ] their claims across the line from conceivable to plausible.” See *Chhun v. Mortgage Elec. Registration Systems, Inc.*, 84 A.3d 419, 422 (R.I. 2013), quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555, 127 S.Ct. 1955, 167 L.Ed.2d 929 (2007).

1. TAPA is an independent charter school under the Charter Public School Act of Rhode Island, RIGL § 16-77-1, *et seq.*, is located in Providence and serves students in the Providence School District, grades 7 through 12.
2. Motta was certified as an elementary school teacher but at no relevant time was she certified to teach grades 7 through 12.
3. On or about August 21, 2013, Motta was hired by TAPA for the position “Teaching Artist – Theater” at a salary of \$40,000 per annum.
4. On or about June 13, 2014, Motta was notified orally of the termination of her employment at TAPA.
5. By letter dated June 16, 2014, TAPA’s Head of School sent a letter to Motta confirming her termination, stating that her final paycheck would be on June 30, 2014, and reciting that “as an Artist in Residence [her employment] has been ‘at will.’ ‘This means that both employees and TAPA have the right to terminate employment at any time, with or without advance notice’ (as stated in the Personnel Policy for TAPA.)” *Id.* A copy of the letter was attached to Motta’s Mem.
7. By letter dated September 12, 2014, Motta’s attorney stated that “[p]ursuant to RIGL § 16-13-1, *et seq.*, Ms. Motta is requesting a hearing to review her termination as a teacher at TAPA.” *Id.*

## **II. The Arguments**

Motta’s claim is premised upon her argument that “TAPA violated her rights by failing to provide timely notice of the non-renewal of her teaching contract” as required under Rhode Island’s Teachers’ Tenure Act (the “Tenure Act”), RIGL § 16-13-1, *et seq.* See Motta’s Mem. at 1-2 and Motta’s September 12, 2014 Petition (both citing RIGL § 16-13-1, *et seq.*). Although Motta admits that she was not certified to teach grade 7 through 12, she argues that TAPA should be equitably estopped from arguing that her lack of proper certification deprives her of the statutory rights provided under the Tenure Act. *Id.* at 2-3. Motta supports her estoppel argument by alleging that “for all intents and purposes” she was a teacher as she spent “one hundred percent of her time . . . devoted to the instruction and guidance of TAPA students.” *id.* at 1, adding that:

TAPA advertised for a teaching position, employed Ms. Motta as a teacher, exclusively gave her teaching duties, told her she would be accountable as a teacher, and held her out as a teacher to the public in written materials and the DOE website.

*Id.* at 2.

TAPA's motion to dismiss is premised upon three arguments, that:

1. the statutory claim under the Tenure Act fails as a matter of law because Motta was not a "teacher" under RIGL § 16-13-1, and thus was not covered under the Act. *See* TAPA's Mem. at 3-5;
2. Motta's lack of proper certification deprives the Commissioner of subject matter jurisdiction over what TAPA characterizes as a common law claim for breach of contract. *See* TAPA's Motion to Dismiss for Lack of Jurisdiction and Failure to State a Claim ("TAPA's Mem.") at 2-3; and
3. the claim is barred under the doctrine of laches since it was made only after the 2014-2015 school year had commenced. *See id.* at 5-6.

### **III. Discussion**

Motta's sole claim is that her statutory rights were violated by TAPA when it terminated her employment without providing the advance notice mandated under the Tenure Act. *See* Motta's Mem. at 1-2 and Motta's September 12, 2014 Petition (both citing RIGL § 16-13-1, *et seq.*).<sup>3</sup> She has not cited her contract or any source other than the Tenure Act in support of her claim.

However, Motta is not covered by the Tenure Act as a matter of law since she was at no relevant time a "teacher" covered by the Act, which is defined as a person "for whose position a certificate issued by the department of elementary and secondary education" ("RIDE"). RIGL § 16-13-1.<sup>4</sup> Whether or not TAPA should be estopped from raising the certification issue is beside the point. The doctrine of estoppel does not somehow convert the actions or inactions of private

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<sup>3</sup> RIGL § 16-13-2 provides that teachers covered by the Act must be afforded written notice "on or before March 1 that the contract for the ensuing year will not be renewed." *Id.*

<sup>4</sup>Of course, Motta's elementary school certification does not somehow constitute certification in the position of high school teacher as per § 16-13-1. Indeed, not surprisingly, Motta has not even made the argument.

parties into a mechanism by which to extend coverage under a statute where it otherwise would not exist.

In any event, as noted by the Rhode Island Supreme Court, for either equitable or promissory estoppel to apply, there must be both “an affirmative representation or equivalent conduct on the part of the person against whom the estoppel is claimed which is directed to another for the purpose of inducing the other to act or fail to act in reliance thereon,” as well as reasonable reliance thereon to a party’s detriment. *See Providence Teachers Union v. Providence School Board*, 689 A.2d 388, 391-92 (R.I. 1997) (equitable estoppel) and *Dellagrotta v. Dellagrotta*, 873 A.2d 101, 110 (R.I. 2005) (promissory estoppel).

Assuming for present purposes that Motta performed the duties of a teacher while employed at TAPA and that TAPA “held her out to the public as a teacher,” this would not constitute an “affirmative representation or equivalent” by TAPA that Motta was a “teacher” under RIGL § 16-13-1. Indeed, even if such an “affirmative representation or equivalent” had been made, it would have had no effect on Motta’s statutory rights, and any reliance thereon by Motta, a certified elementary school teacher, would have been unreasonable as a matter of law.<sup>5</sup>

Both TAPA and Motta knew or should have known that those teaching at the school needed to be properly certified. *See* RIGL § 16-77.3-7(4) (making clear that § 16-11-1, which provides that “no person shall be employed to teach . . . unless the person shall have a certificate of qualification,” *id.*, applies to district charter schools). And while the extent and nature of the parties’ respective obligations with respect to ensuring proper certification are significant issues, they are not relevant here.

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<sup>5</sup> Contrary to Motta’s argument, neither the Commissioner’s decision in *Cieplinski v. The Metropolitan Regional Career and Technical Center*, 13-10 (May 17, 2010) (Murray, H.O.), nor *Schiavulli v. School Committee of North Providence*, 114 R.I. 443, 334 A.2d 416 (1975), *see* Motta’s Mem. at 2-3, are particularly relevant or support application of the doctrine here.

Finally, because (1) Motta is not covered by the statute upon which she bases her claim for relief, there is no reason to address TAPA's arguments based upon (2) subject matter jurisdiction, or (3) the doctrine of laches.

#### **IV. Conclusion**

For all the above reasons, Motta's claim under the Tenure Act is hereby denied and dismissed.

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ANTHONY F. COTTONE, ESQ.,  
as Hearing Officer for the Commissioner

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Deborah A. Gist, Commissioner

Date: December 5, 2014